

If no tangible personal property is transferred to customers, then no Illinois Retailers' Occupation Tax, Use Tax, Service Occupation Tax Act, or Service Use Tax liability would be incurred on the sales to those customers. See 86 Ill. Adm. Code 130.301. (This is a GIL).

March 3, 2003

Dear Xxxxx:

This letter is in response to your letter dated December 3, 2002. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120 subsections (b) and (c), which can be found on the Department's Internet website at <http://www.revenue.state.il.us/Laws/regs/part1200/>.

In your letter, you have stated and made inquiry as follows:

We writing to request a written determination (General Information Letter) from the Illinois Department of Revenue concerning certain sales tax¹ issues that are outlined below.

FACTS

Our client ('Taxpayer' or 'Client') is a foreign (non-Illinois) corporation located outside Illinois, but having Illinois sales and use tax nexus, that sells, on a annual subscription basis, web based business information, which includes an integration of comprehensive and up-to-date business and financial information including information relating to over one million public and private companies globally.

Client does not transfer tangible personal property or intangible property rights to Illinois customers. However, it may perform training services physically within Illinois. Client maintains minimal property in Illinois and its web server, from which its information service is accessed, is located outside of Illinois.

RULING REQUESTED

The facts indicate that there is no transfer of tangible personal property to the customers. Therefore, the provision of Web-based business information, which includes an integration of comprehensive and up-to-date business and financial information on over one million public and private companies and billed on an annual subscription basis, would not be subject to the Illinois Retailer's Occupation Tax.

¹ Retailers' Occupation Tax ('ROT'); Service Occupation Tax ('SOT'); Use Tax ('UT'); and Service Use Tax ('SUT').

ANALYSIS

The Illinois sales and use taxes are contained in four separate acts. The ROT is imposed on persons engaged in the business of selling tangible personal property at retail.² The UT compliments the ROT and is imposed on the privilege of using in Illinois tangible personal property purchased from a retailer.³ The SOT is imposed on all persons (servicemen) engaged in the business of making sales of services where tangible personal property is transferred.⁴ The SUT compliments the SOT and is imposed on the privilege of using in Illinois real or tangible personal property received as an incident to a purchase of service from a serviceman or service provider.⁵

As general matter, Illinois does not impose tax on sales of services. That is, the Illinois SOT applies to tangible personal property transferred as an incident of the sale of service and not the actual service itself.⁶

For Illinois ROT purposes, canned computer software is tangible personal property regardless of the form in which it is transferred or transmitted. The sale at retail, or transfer, of canned software intended for general or repeated use is taxable. However, a license of software is not a taxable retail sale if it meets five conditions:

- A) it is evidenced by a written agreement signed by the licensor and the customer;
- B) it restricts the customer's duplication and use of the software;
- C) it prohibits the customer from licensing, sublicensing or transferring the software to a third party (except to a related party) without the permission and continued control of the licensor;
- D) the licensor has a policy of providing another copy at minimal or no charge if the customer loses or damages the software, or of permitting the licensee to make and keep an archival copy, and the policy is either stated in the license agreement, supported by the licensor's books and records, or supported by a notarized statement made under penalties of perjury by the licensor; and
- E) the customer must destroy or return all copies of the software to the licensor at the end of the license period. This provision is deemed to be met, in the case of a perpetual license, without being set forth in the license agreement.⁷

The sale of custom computer software prepared to the special order of the customer is not subject to Illinois tax.⁸ Charges for training, telephone assistance, installation and consultation are exempt if they are separately stated from the selling price of canned software.⁹

Further, in a General Information Letter, ST-02-0105-GIL (05/03/2002), the Illinois Department of Revenue stated 'information that is downloaded is generally not taxable because it is considered an intangible.' This is based on a reading of Ill. Admin. Code tit.

² 35 Ill. Comp. Stat. 120/2.

³ 35 Ill. Comp. Stat. 105/3.

⁴ 35 Ill. Comp. Stat. 115/3.

⁵ 35 Ill. Comp. Stat. 110/3.

⁶ 35 Ill. Comp. Stat. 115/3.

⁷ 86 Ill. Admin. Code § 130.1935.

⁸ Id.

⁹ Id. at (b).

86, § 130.2105(a)(3), which states that '[I]nformation or data that is downloaded electronically, such as ... newspapers or magazines, does not constitute the transfer of tangible personal property. These types of transactions represent the transfer of intangibles and are thus not subject to [ROT] and [UT].'

As noted above, the research products provided by Client are information services that grant subscribers access to comprehensive business and financial information on public and private companies. This information is accessed strictly via the Internet through viewing and downloads. Although software clearly must be utilized to provide these information services, no software or other tangible personal property is transferred by Client to its customers. As indicated by an Illinois Department of Revenue ruling, the sale of a database of information provided to a customer and any updates to that database are treated the same as the sale of computer software for tax purposes. However, the sale of information furnished through computers, where no tangible personal property is transferred, is not subject to tax.¹⁰ Thus, as long as no tangible personal property is transferred to customers, the sale of access to a database is not subject to sales or use tax in Illinois.

CONCLUSION

We respectfully request the Illinois Department of Revenue's written determination concerning the Above-referenced issues. If any questions arise or any clarification is needed, please feel free to call me.

DEPARTMENT'S RESPONSE:

The Illinois Retailers' Occupation Tax Act imposes a tax upon persons engaged in this State in the business of selling tangible personal property to purchasers for use or consumption. See 86 Ill. Adm. Code 130.101. The Use Tax Act imposes a tax upon the privilege of using in this State tangible personal property purchased at retail from a retailer. See 86 Ill. Adm. Code 150.101. If no tangible personal property is being transferred to your client's customers, then no Illinois Retailers' Occupation Tax and Use Tax would apply. Likewise, the Service Occupation Tax Act and Service Use Tax are imposed on the transfer of tangible personal property incident to sales of service. See 86 Ill. Adm. Code 140.101 and 160.101. If no tangible personal property is being transferred to your client's customers, then no Illinois Service Occupation Tax Act and Service Use Tax would apply.

As you have noted, canned computer is considered tangible personal property no matter in what form it is transferred (including Web based downloads). See 86 Ill. Adm. Code 130.1935. If your client does not transfer canned software or canned software updates to its customers, then it appears that your client would not incur Illinois Retailers' Occupation Tax, Use Tax, Service Occupation Tax Act, or Service Use Tax liability on the downloads of database information described in your letter.

Please also note that as long as database providers charge only for the search and downloading of information, and do not charge for the telecommunications transmission charges, those transactions are also not subject to the Telecommunications Excise Tax and Simplified Municipal Telecommunications Tax liability. See 35 ILCS 630/1 et seq. and 35 ILCS 636/5-1 et seq.

¹⁰ Ill. Priv. Ltr. Rul. 94-0397 (Sept. 23, 1994).

I hope this information is helpful. The Department of Revenue maintains a website, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b) described above.

Very truly yours,

Terry D. Charlton
Associate Counsel

TDC:msk